

6/1/23

CENTRAL DISTRICT OF CALIFORNIA

BY:  DEPUTY

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

UNITED STATES DISTRICT COURT

for the

Central District of California

Civil Division

Kellen John Clarke

Case No.

2:23-CV-00780-ODW-MRW

(to be filled in by the Clerk's Office)

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

Wellpath, LLC. at the San Luis Obispo County Jail,
Doctor Kushdi Cader, Doctor Christine Mulkerin

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	Kellen John Clarke		
All other names by which you have been known:			
ID Number	BS1620		
Current Institution	Released on Parole		
Address	5401 Capistrano Avenue		
	Atascadero	Ca	93422
	<i>City</i>	<i>State</i>	<i>Zip Code</i>

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name	Wellpath LLC. at the San Luis Obispo County Jail		
Job or Title (<i>if known</i>)	San Luis Obispo County Jail Health Care Provider		
Shield Number			
Employer	Wellpath LLC. (contracted by the County of San Luis Obispo)		
Address	880 Oklahoma Avenue		
	San Luis Obispo	Ca	93405
	<i>City</i>	<i>State</i>	<i>Zip Code</i>
<input checked="" type="checkbox"/> Individual capacity <input type="checkbox"/> Official capacity			

Defendant No. 2

Name	Doctor Kushdi Cader		
Job or Title (<i>if known</i>)	Lead Jail Physician		
Shield Number			
Employer	Wellpath LLC. (at the San Luis Obispo County Jail)		
Address	880 Oklahoma Avenue		
	San Luis Obispo	Ca	93405
	<i>City</i>	<i>State</i>	<i>Zip Code</i>
<input checked="" type="checkbox"/> Individual capacity <input type="checkbox"/> Official capacity			

Defendant No. 3

Name Doctor Christine Mulkerin

Job or Title *(if known)* San Luis Obispo Chief Medical Officer

Shield Number _____

Employer County of San Luis Obispo

Address 1055 Monterey Avenue

San Luis Obispo Ca 93408

City State Zip Code

☒ Individual capacity ☐ Official capacity

Defendant No. 4

Name _____

Job or Title *(if known)* _____

Shield Number _____

Employer _____

Address _____

City State Zip Code

☐ Individual capacity ☐ Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against *(check all that apply)*:

☐ Federal officials (a *Bivens* claim)

☒ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials? 8th Amendment, Cruel and Unusual Punishment (refusal of medical attention and care as needed in a correctional facility). Violation of American Disabilities Act, (refusal to allow the assertion of rights under the American Disabilities Act)

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

- D. Section 1983 allows defendants to be found liable only when they have acted “under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia.” 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (*check all that apply*):

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☒ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner
- ☐ Other (*explain*) _____

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose. Between December 28, 2021 and May 5, 2022. San Luis Obispo County Jail.

- C. What date and approximate time did the events giving rise to your claim(s) occur?
December 28, 2021, January 20, 2022, March 14, 2022 proven by court order. Additional attempts had been made inside the jail through medical requests from December 17, 2021 through May 5, 2022.
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- D. What are the facts underlying your claim(s)? *(For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)*
The plaintiff had requested medical attention concerning his Glioma and Ataxia through court orders and internal jail medical requests. All requests were denied by the Lead Jail Physician, Doctor Kushdi Cader, justifying a deliberate indifference. A medical grievance was filed with the Chief Medical Officer, Christine Mulkerin, in reference to the plaintiff's denial of medical care. In her response, she denied all claims by the plaintiff that he had been refused medical care or that his ADA rights had been violated, justifying a deliberate indifference. Additionally, existing jail medical records prove that the plaintiff did not receive any appropriate medical attention ordered by the courts or otherwise for his existing medical conditions and also prove that they were aware of the plaintiff's "Chronic" conditions during his incarceration. The plaintiff was labeled as a mentally ill patient without any prior diagnosis and housed
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V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

Progression of chronic condition of Glioma and Ataxia resulting in severe mental and physical pain, anguish, substantial emotional distress, torment, terror, alarm, annoyance, harassment, mental and emotional degradation (loss of self worth)

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

Trial by jury. For the jury to decide on any actual or punitive damages for the alleged acts and to apply the appropriate monetary damages.

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act (“PLRA”), 42 U.S.C. § 1997e(a), requires that “[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.”

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

☒ Yes

☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

San Luis Obispo County Jail

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

☒ Yes

☐ No

☐ Do not know

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

☒ Yes

☐ No

☐ Do not know

If yes, which claim(s)?

Denial of medical care or attention.

- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☐ Yes

☐ No

- E. If you did file a grievance:

1. Where did you file the grievance?

San Luis Obispo County Jail

2. What did you claim in your grievance?

Denial of medical attention or care and violation of ADA resources

3. What was the result, if any?

Chief Medical Officer, Christin Mulkerin, denied all claims made by the plaintiff.

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. *(Describe all efforts to appeal to the highest level of the grievance process.)*
Plaintiff was transported to a California State Correctional Facility before he was able to appeal the grievance.
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F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The “three strikes rule” bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has “on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this “three strikes rule”?



Yes



No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

The United States District Court for the Central District of California

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☐ Yes

☒ No

B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition. _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

☐ Yes

☒ No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 05/31/2023

Signature of Plaintiff

Kellen J Clarke

Printed Name of Plaintiff

Kellen J Clarke

Prison Identification #

BS1620

Prison Address

Released on Parole 5401 Capistrano Avenue

Atascadero

Ca

93422

City

State

Zip Code

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City

State

Zip Code

Telephone Number

E-mail Address